

Chapter 128

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Council and Chairman shall serve without compensation, or
incurred for reasonable and necessary expenses incident to

Council shall be designated in addition to the members
shall serve in that capacity at the pleasure of the

suant to this section, to replace a member whose
o the expiration of his term shall be filled only for the
opment of the Arts.

authorized and directed to establish a special fund
umentalities, agencies and political subdivisions of the
it associations in the development of the arts in
appreciation of artistic expressions by citizens of the

contract with any instrumentalities, agency or political
y in any private or public nonprofit association, to

Council shall establish such rules and regulations as
the eligibility of any instrumentalities, or agency or
ation. A private or public nonprofit association shall
from the Internal Revenue Service as proof of nonprofit

be responsible for fiscal matters and auditing of funds
Expenditures from this special fund shall be in
fund which are unexpended or unencumbered shall not

it from Chapter 69 of this title."

ive immediately on the date of its enactment.

CHAPTER 129

FORMERLY

SENATE BILL NO. 87

MENT TO THE CONSTITUTION OF THE STATE OF DELAWARE,
N PENALTIES FOR ELECTION OFFENSES.

MBLY OF THE STATE OF DELAWARE (Two-thirds of all
ereof concurring therein):

stitution of the State of Delaware by deleting the
in the first sentence of Section 7.

cle V of the Constitution of the State of Delaware by
"himself" wherever they occur and by inserting in lieu
y deleting the word "his" wherever it occurs and by
"said person's".

Chapter 128

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CHAPTER 130

FORMERLY

SENATE BILL NO. 58

AS AMENDED BY

SENATE AMENDMENT NOS. 1 AND 2 AND HOUSE AMENDMENT NO. 1

AN ACT TO AMEND TITLE 11 AND TITLE 16 TO PROVIDE FOR TRUTH IN SENTENCING.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. This Act shall be known as the "Truth in Sentencing Act of 1989".

Section 2. The purposes of this Act are:

A. To achieve truth in sentencing by assuring that the public, the State and the Court will know that the sentence imposed by the Court will be served by the defendant and that, the defendant will know what the actual effect of the sentence will be.

B. To require accountability of the Court in fashioning a sentence designed to meet the objectives of SENTAC legislation including, but not limited to providing the least restrictive sentence that assures the public safety, makes use of sentencing alternatives and incarcerates the violence prone offender.

C. To encourage the Courts to impose sentences combining incarceration (where appropriate) with quasi-incarceration and probationary follow-up to assure continued supervision of offenders and their successful reentry into society with minimum risk to society.

Section 3. The provisions of this Act will take effect with respect to all crimes which are committed as of 12:01 a.m., June 30, 1990 or thereafter.

Section 4. The provisions of Title 11 and Title 16, which are repealed by this Act shall remain in force and effect for the purpose of trial and sentencing for all crimes which occur prior to 12:01 a.m., June 30, 1990.

Section 5. Amend Title 11 of the Delaware Code by striking Sections 4381, 4382, 4383 and 4384 in their entirety and enacting the following sections in lieu thereof:

§4381. Earned Good Time.

(a) All sentences imposed for any offenses other than a life sentence imposed for Class A felonies may be reduced by earned good time under the provisions of this Section and Rules and Regulations adopted by the Commissioner of Corrections.

(b) "Good time" may be earned for good behavior while in the custody of the Department of Corrections when the person has not been guilty of any violation of discipline, rules of the Department, or any criminal activity and has labored with diligence toward rehabilitation according to the following conditions:

(1) During the first year of any sentence, good time may be awarded at the rate of 2 days per month beginning on the first day of his confinement.

(2) After completing 365 days of any sentence, good time may be awarded at the rate of 3 days per month.

(3) No person shall be awarded more than 36 days of good time under this subsection for good behavior in any one year consisting of 365 calendar days actually served.

(c) "Good time" may be earned for participation in educational and/or rehabilitation programs as designated by the Commissioner under the following conditions:

(1) Good time may be awarded for satisfactory participation in approved programs at a rate of up to 2 days per calendar month.

(2) No more than 24 days off program good time total as established in this subsection may be awarded in any one year consisting of 365 days actually served.

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(d) 'Good time' may be earned by participation in work programs as authorized by §653c or this title at a rate of up to 2.5 days per month with a limit of 30 days earned during any one year consisting of 365 days actually served.

(e) No more than a total of 90 days of 'good time' may be earned in any one year consisting of 365 days actually served.

§4382. Forfeiture of Good Time.

(a) Any person subject to the custody of the Department at levels IV or V shall, upon the conviction of any crime during the term of his sentence, forfeit all good time accumulated to the date of the criminal act, this forfeiture is not subject to suspension.

(b) Any person subject to the custody of the Department of Corrections at level IV or V who is determined to have violated the Rules of the Department of Corrections shall accrue to the date of such offense. Forfeiture under this subsection may be suspended by the Department for the purposes of encouraging rehabilitation or compliance with discipline.

(c) When good time is actually ordered forfeit, it may not be recovered by the incarcerated person."

Section 6, Amend Title 11 of the Delaware Code by striking Sections 4201, 4202, 4204b, 4205, 4206, 4207 and 4209a in their entirety, and enacting the following sections:

§4201. Classification of Felonies.

(a) Felonies are classified for the purpose of sentence into seven (7) categories:

- (1) Class A Felonies;
- (2) Class B Felonies;
- (3) Class C Felonies;
- (4) Class D Felonies;
- (5) Class E Felonies;
- (6) Class F Felonies;
- (7) Class G Felonies.

(b) Any crime or offense which is designated as a felony but which is not specifically given a class shall be a Class G Felony and shall carry the sentence provided for said class felony.

§4202. Classification of Misdemeanors.

(a) Misdemeanors are classified for the purpose of sentence into two (2) categories:

- (1) Class A Misdemeanors;
- (2) Class B Misdemeanors.

(b) Any offense defined by statute which is not specifically designated a felony, a Class A Misdemeanor, a Class B Misdemeanor or a violation shall be an unclassified §4204. Authorized Disposition of Convicted Offenders.

(b) A person convicted of a Class A felony may be sentenced to life imprisonment in accordance with §405 of this title, unless the conviction is for first-degree murder, in which event §409 of this title shall apply. Notwithstanding any other statute, a sentence under §4209 of this title may not be suspended or reduced by the Court.

In accordance with §405 of this title, unless the conviction is for first-degree murder, in which event §409 of this title shall apply. Notwithstanding any other statute, a sentence under §4209 of this title may not be suspended or reduced by the Court.

§4205. Sentence for Felonies.

(a) A sentence of incarceration for a felony shall be a definite sentence.

(b) The term of incarceration which the Court may impose for a felony is fixed as follows:

- (1) for a Class A Felony not less than 15 years up to life imprisonment to be served at Level V except for conviction of first degree murder in which event §4209 of this title shall apply.
- (2) for a Class B Felony not less than 2 years up to 20 years to be served at Level V.
- (3) for a Class C Felony up to 10 years to be served at Level V.
- (4) for a Class D Felony up to 8 years to be served at Level V.
- (5) for a Class E Felony up to 5 years to be served at Level V.
- (6) for a Class F Felony up to 3 years to be served at Level V.
- (7) for a Class G Felony up to 2 years to be served at Level V.

(c) In the case of the conviction of any felony, the Court shall impose a sentence of Level V incarceration where a minimum sentence is required by subsection (b) of this section and may impose a sentence of Level V incarceration up to the maximum stated in subsection (b) for each class of felony.

(d) Where a minimum sentence is required by subsection (b) of this section, such sentence shall not be subject to suspension by the Court.

(e) Where no minimum sentence is required by subsection (b), or with regard to any sentence in excess of the minimum required sentence, the Court may suspend that part of the sentence for probation or any other punishment set forth in §4204 of this title.

(f) Any term of Level V incarceration imposed under this section must be served in its entirety at Level V, reduced only for earned good time as set forth in §4381 of this title.

(g) No term of Level V incarceration imposed under this section shall be served in other than a full custodial Level V institutional setting unless such term is suspended by the Court for such other level sanction.

(h) The Department of Corrections, the remainder of this section notwithstanding, may house Level V inmates at a Level IV work release center or halfway house during the last 180 days of their sentence; provided, however, that the first five (5) days of any sentence to Level V, not suspended by the Court, must be served at Level V.

(1) The Department of Corrections, the remainder of this section notwithstanding, may grant Level V inmates 48-hour furloughs during the last 120 days of their sentence to assist in their adjustment to the community.

(j) No sentence to Level V incarceration imposed pursuant to this section is subject to parole.

(k) In addition to the penalties set forth above, the Court may impose such fines and penitaries as it deems appropriate.

(l) In all sentences for less than one year the Court may order that more than five (5) days be served in Level V custodial setting before the Department may place the offender in Level IV custody.

(a) The sentence for a Class A Misdemeanor may include up to 1 year incarceration at Level V and such fine up to \$2,000, restitution or other conditions as the Court deems appropriate.

(b) The sentence for a Class B Misdemeanor may include up to 6 months incarceration at Level V and such fine up to \$1,000, restitution or other conditions as the Court deems appropriate.

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(c) The sentence for an unclassified Misdemeanor may include up to 30 days incarceration at Level V and such fine up to \$500, restitution or other conditions as the Court deems appropriate.

(d) The Court may suspend any sentence imposed under this Section for probation or any of the other sanctions set forth in §424 of this Title.

(e) Any term of Level V Incarceration imposed under this Section must be served in its entirety at Level V, reduced only for earned "good time" as set forth in §428 of this Title.

(f) No term of Level V incarceration imposed under this Section for probation or other than a full custodial Level V institutional setting unless such term is suspended by the Court for such other level sanction.

(g) The Department of Corrections, the remainder of this Section notwithstanding, may house Level V inmates at a Level IV work release center or halfway house during the last 180 days of their sentence; provided, however, that the first five (5) days of any sentence to Level V, not suspended by the Court, must be served at Level V.

(h) The Department of Corrections, the remainder of this Section notwithstanding, may grant Level V inmates 48-hour furloughs during the last 120 days of their sentence to assist in their adjustment to the community.

(i) Any sentence for issuing a worthless check pursuant to §900 of this Title shall require restitution to the person to whom the check was given, for the purposes of this subsection, restitution shall mean the amount for which the check was written plus a service fee of \$30.00 for processing a worthless check, or a fee of \$50.00 if more than one check by same person was processed.

(j) In all sentences for less than one year the Court may order that more than five (5) days be served in Level V custodial setting before the Department may place the offender in Level IV custody.

§4207. Sentences for Violations.

(a) The Court may impose a fine of up to \$300 for the first offense of any violation, up to \$600 for the second offense of that same violation and up to \$1,000 for the third offense or the same violation, provided that only violations which occurred within 5 years of the violation for which sentence is imposed shall be considered in determining sentence.

(b) The Court may impose a period of Level I probation up to 1 year for any violation."

Section 7. Amend Chapter 43, of Title 11 of the Delaware Code by adding a new §4354 thereto which shall read as follows:

§4354. Applicability to Sentences Imposed Pursuant to Truth in Sentencing.

No sentence imposed pursuant to the provisions of the Truth in Sentencing Act of 1989, shall be subject to parole under the provisions of this subsection."

Section 8. Amend Title 11 of the Delaware Code by designating the following offenses to the following classification:

"Section

Classification

501	Class A Misdemeanor	602 Unclassified Misdemeanor
502	Class F Felony	603 Class A Misdemeanor
503	Class E Felony	604 Class E Felony
511	Class A Misdemeanor	611 Class A Misdemeanor
512	Class G Felony	612 Class D Felony
513	Class E Felony	613 Class C Felony
521	Unclassified Misdemeanor	621 Class A Misdemeanor

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782	Class G Felony	Class F Felony
783	Class C Felony	Class G Felony
783A	Class B Felony	Class A Misdemeanor
785	Class A Misdemeanor	Class G Felony
	Class G Felony if child removed from DE	Class A Misdemeanor
791	Class A Misdemeanor	Class E Felony
801	Class G Felony	Class A Misdemeanor
802	Class D Felony	Class G Felony
803	Class C Felony	Class A Misdemeanor
804	Class A Misdemeanor	Class A Misdemeanor
	811(b)(1)	Class E Felony
820	Class G Felony	Class A Misdemeanor
821	Class A Misdemeanor	Class G Felony
822	Unclassified Misdemeanor	Class A Misdemeanor
823	Class B Misdemeanor	Class A Misdemeanor
824	Class F Felony	Class A Misdemeanor
825	Class D Felony	Class A Misdemeanor
826	Class C Felony	Class A Misdemeanor
828	Class F Felony	Class A Misdemeanor
831	Class E Felony	Class B Misdemeanor
832	Class B Felony	Class G Felony
840	Class G Felony - \$500 or more	Class A Misdemeanor - less than \$500
841	Class A Misdemeanor - less than \$500	Class G Felony - \$500 or more
845	Class E Felony	Class A Misdemeanor - less than \$500
	Class G Felony - \$500 or more	Class A Misdemeanor - less than \$500
	Class A Misdemeanor - less than \$500	Class G Felony
	Class E Felony	Class A Misdemeanor
	Class G Felony - \$500 or more	Unclassified Misdemeanor
	Class A Misdemeanor - less than \$500	Class D Felony
	Class B Misdemeanor	Class E Felony
	Class G Felony - \$500 or more	Class F Felony
	Class A Misdemeanor - less than \$500	Class G Felony
	Class A Misdemeanor	Class A Misdemeanor
	Class G Felony	Class A Misdemeanor
	Class G Felony	Class A Misdemeanor
	Class G Felony	Class A Misdemeanor
	Class G Felony	Class A Misdemeanor
	837(e)	Class A Misdemeanor
853	Class A Misdemeanor	Class G Felony
859	Class G Felony	Class A Misdemeanor
	Class A Misdemeanor - less than \$500	Class G Felony
	Class A Misdemeanor	Class A Misdemeanor
	Class G Felony	Class A Misdemeanor
	Class G Felony	Class A Misdemeanor
	Class G Felony	Class A Misdemeanor
	837(d)	Class A Misdemeanor
	937(e)	Class G Felony
	1001	Class A Misdemeanor
	1101	Class A Misdemeanor

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1102	Class A Misdemeanor	Class E Felony
1105	Class A Misdemeanor	Class E Felony
1106	Class B Misdemeanor	Class G Felony
1107	Unclassified Misdemeanor	Class F Felony
1108		(if witness is complaining witness)
1109	Class B Felony	Class G Felony
1110	Class D Felony	Class F Felony
1201	Class B Felony	Class G Felony
1203	Class E Felony	Class F Felony
1205	Class A Misdemeanor	(if witness is complaining witness)
1206	Class A Misdemeanor	Class E Felony
1207	Class A Misdemeanor	Class G Felony
1211	Class A Misdemeanor	Class F Felony
1212	Class A Misdemeanor	Class G Felony
1221	Class A Misdemeanor	Class F Felony
1222	Class F Felony	Class G Felony
1223	Class D Felony	Class F Felony
1233	Class A Misdemeanor	(if witness is complaining witness)
1241	Class B Misdemeanor	Class E Felony
1243	Class A Misdemeanor	Class G Felony
1244	Class A Misdemeanor	Class F Felony
1245	Unclassified Misdemeanor	Class G Felony
1246	Class A Misdemeanor	Class S Misdemeanor
1251	Class A Misdemeanor	Class A Misdemeanor
1252	Class G Felony	Class A Misdemeanor
1253	Class D Felony	Class A Misdemeanor
1254(a)	Class D Felony	Class A Misdemeanor
1254(b)	Class B Felony	Class A Misdemeanor
1256	Class A Misdemeanor	Class A Misdemeanor
1257	Class F Felony (weapon)	Class B Misdemeanor
1259	Class A Misdemeanor	Unclassified Misdemeanor - if 2 prior convictions within one year.
1261	Class G Felony	Violation
1262	Class E Felony	Violation
1263	Class E Felony	Violation
1263(a)(2)	Class E Felony	Violation

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1324	Unclassified Misdemeanor	Class A Misdemeanor
1325	Class A Misdemeanor	Class E Felony
1326	Violation	Unclassified Misdemeanor
1331	Class A Misdemeanor	Unclassified Misdemeanor
1332	Class A Misdemeanor	Class B Felony
1335	Class A Misdemeanor	Class F Felony
1336(1)	Class A Misdemeanor	Class F Felony
1338	Class G Felony	Class F Felony
1339	Class G Felony - unless injury	Class F Felony
1340	Class E Felony - if death Class A Felony - if death Class A Misdemeanor - provided mandatory fine shall remain as § 5 Class B Misdemeanor	Class F Felony
1341	Class B Misdemeanor	Class B Misdemeanor
1342	Class B Misdemeanor	Class B Misdemeanor
1343	Violation	Class B Misdemeanor
1351	Class F Felony	Class B Felony
1352	Class E Felony	Class D Felony
1353	Class C Felony	Class B Felony
1355	Class B Misdemeanor	Class B Felony
1361	Class E Felony - for sale to minor	Class E Felony
1365	Class G Felony - otherwise	Class B Felony
1401	Class A Misdemeanor	Class B Felony
1402	Class A Misdemeanor	Class B Felony
1403	Class A Misdemeanor	Class B Misdemeanor
1404	Unclassified Misdemeanor - unless previous conviction within 5 years then Class A Misdemeanor	Class B Misdemeanor
1405	Class A Misdemeanor	Class F Felony
1406	Violation	Class F Felony
1407	Class A Misdemeanor	Class F Felony
1411	Class A Misdemeanor	Class F Felony
1423	Class A Misdemeanor	Class G Felony
1442	Class G Felony - unless second offense within 5 years then Class E Felony	Unclassified Misdemeanor
1443	1444	Class A Misdemeanor
1445	Violation	Class E Felony
1446		Unclassified Misdemeanor
1447		Unclassified Misdemeanor
1448		Class B Felony
1449		Class B Felony
1450		Class F Felony
1451		Class F Felony
1452		Class B Misdemeanor
1453	150(a)	Class B Misdemeanor
	Section 9. Amend title 16 of the Delaware Code by designating the following following classifications:	Classification
	"felicit"	
	4752	Class E Felony
	4753A	Class D Felony
	4753	Class A Misdemeanor
	4753A(a)(1)	Class B Felony
	4753A(a)(2)	Class B Felony
	4753A(a)(3)	Class B Felony
	4753A(a)(4)	Class B Felony
	4753A(a)(5)	Class B Felony
	4753A(a)(6)	Class B Felony
	4753A(a)(7)	Class B Felony
	4753A(a)(8a)	Class B Felony
	4754	Class B Misdemeanor
	4752A	Class B Misdemeanor
	4755(a)(1)	Class F Felony
	4755(a)(2)	Class F Felony
	4755(a)(3)	Class A Misdemeanor
	4755(a)(4)	Class A Misdemeanor
	4755(a)(5)	Class F Felony
	4756	Class F Felony
	4757(c)	Class G Felony
	4757(d)	Unclassified Misdemeanor

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4761(1)	Class C Felony
4761(2)	Class E Felony
4761(3)	Class B Felony
4761(4)	Class C Felony
4771	Class A Misdemeanor
4772	Class G Felony
4773	Class E Felony
4774	Unclassified Misdemeanor"

Section 10. Amend Title 16, §4751(a)(1) by striking the number of years in each subsection and inserting in lieu thereof the following years:

Years	
3.	2
4.	3
5.	5
6.	10
7.	9

Section 11. Notwithstanding any provision of this Act to the contrary, the fines and mandatory sentence provisions of the following sections of Title 16 shall remain in effect as indicated.

"Section	<u>Mandatory Sentence Provision</u>
4752	Fines remain in effect:
§753A	All mandatory fines and minimum mandatory terms of incarceration remain in effect
4761(3) & (4)	All minimum mandatory terms of incarceration remain in effect
§4751(a)(2)	All minimum mandatory terms of incarceration remain in effect".

Section 12. Notwithstanding any provision in this Act to the contrary, the mandatory sentence provisions of Title 11, Sections 630(b), 630(a)(b), and 831(b) shall remain in their entirety and substituting in lieu thereof the following language:

(b) A person convicted of Robbery First Degree for a second or subsequent offense shall receive a minimum sentence of four (4) years at Level V notwithstanding the provisions of §5405(b)(2) and 4215 of this Title.

(c) The sentencing provisions of this section apply to Attempted Robbery First Degree as well as Robbery First Degree.

Section 13. Amend title 11, Section 832 by striking said subsections (b), (c) and (d) and read as follows:

Section 14. Amend Title 11, Chapter 42 by adding a new subsection 4216 thereto which shall read as follows:

§4216. Transition Provisions.

(a) Where an inmate is serving a sentence to Level V (incarceration) imposed under the Truth in Sentencing Act of 1999 and receives a subsequent sentence to Level V

(C) Where an inmate is serving a "non-mandatory" Level V (incarceration) sentence imposed not under the Truth in Sentencing Act of 1999, and is subsequently sentenced to Level V under the provisions of the Truth in Sentencing Act and had less than three years remaining on his prior sentence, the Court at the time of sentencing under the Truth in Sentencing Act may in its discretion suspend the remainder of the prior Truth in Sentencing Level V sentence.

(d) Any individual convicted of a crime on or after January 1, 1990, which crime occurred prior to that date may elect to be sentenced under the provisions of this Act rather than under the prior provisions of this Title."

Section 15. Amend §4751 of Title 16 by repealing said section in its entirety and inserting in lieu thereof the following section:

=§4751. Prohibited Acts & Penalties

(a) Except as authorized by this Chapter, any person who manufactures, delivers or possesses with intent to manufacture or deliver a controlled substance or a counterfeit controlled substance classified in Schedule I or II which is a narcotic drug, is guilty of a Class C Felony and shall be fined not less than \$5,000 nor more than \$50,000.

(b) Except as authorized by this Chapter, in cases where death occurs as a result of the use or consumption of a controlled substance or counterfeit controlled substance classified in Schedule I or II which is a narcotic drug, any person who is convicted of manufacturing or delivering such drug shall be guilty of a Class B felony and shall be fined not less than \$10,000 nor more than \$100,000.

(c) Where an individual is convicted of a violation of subsection (a) or (b) of this section and the Attorney General may move to sentence the defendant as a non-addict, the Court shall conduct a hearing at which the Attorney General shall have the burden of proof by a preponderance of the evidence that the defendant is a non-addict. If the Court, after hearing, is satisfied that the defendant is, and was at the time of the offense, not addicted to controlled substances, then the following enhanced penalties shall apply:

(1) for the first violation of this section a mandatory minimum sentence of 6 years to be served at Level V.

(2) for the second or subsequent violation of this section a mandatory minimum sentence of 12 years to be served at Level V.

These minimum sentences may not be suspended by the Court."

Section 16. Amend Title 11 of the Delaware Code of 1974 by enacting a new §4216 thereto which shall read as follows:

§4216. Jurisdiction Over Sentence Reduced.

(a) In any case where the trial Court has imposed a sentence in excess of two years, Incarceration at Level V custody the Court shall retain jurisdiction to modify such sentence to reduce the level of custody or time to be served under the provisions of this section.

(b) The Court may modify such sentence solely upon the basis of an application filed by the Department of Correction for good cause shown.

(c) Good cause under this section shall include, but not be limited to, exception rehabilitation of the offender, serious medical illness or infirmity of the offender and prison overcrowding.

(d) Any application by the Department of Correction under this section shall be filed with the Board of Parole which shall hold a hearing under the provisions of

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subsection 4350(a) of this Title for the purpose of making a recommendation to trial court as to approval or disapproval of the application for modification.

(e) Upon receipt of the recommendation of the Board of Parole, the Court may in its discretion grant or deny the application for modification of sentence. The Court may request additional information, but need not hold further hearings on the application."

Section 17. Amend Title II of the Delaware Code of 1974 by enacting a new subsection 4204(m) thereto which shall read as follows:

"(1) Whenever a Court imposes a period of incarceration at Level V custody for one or more offenses that totals one year or more, then that Court must include as part of its sentence a period of custodial supervision at either Level IV, III or II for a period of not less than six months to facilitate the transition of the individual back into society."

Section 18. Amend Title II of the Delaware Code of 1974 by enacting a new subsection 4204(m) thereto to read as follows:

"(m) Whenever a court imposes a period of incarceration at Level V custody in excess of 30% of the maximum allowable penalty or imposes a period of incarceration at Level V custody less than 20% of the maximum allowable penalty, such court shall explain, in writing, the aggravating or mitigating circumstances for imposing such penalty. The basis for mitigating or aggravating circumstances shall be prescribed and adopted by the Sentencing Accountability Commission."

Approved July 17, 1989.

CHAPTER 132

FORMERLY

HOUSE BILL NO. 349

AN ACT TO AMEND CHAPTER 29, TITLE 7 OF THE DELAWARE CODE RELATING

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DE
members elected to each House thereof concurring therein):

Section 1. Amend Section 2908, Chapter 29, Title 7 of the
new sentences to paragraph 6 of said Section to read as follows

"Said program for issuing permits for various activities
include but is not limited to the authority to adopt and
issuances of permits including fees for the use of State
parties by the Department of Agriculture. It is expressly
collected by the Department shall not exceed \$30.00 per
the State appropriation or be deducted therefrom, but shall
available for carrying out the provisions of this subsec
paid to the State Treasurer and credited by him/her to
carrying out the purposes of this subchapter."

Approved July 18, 1989.

CHAPTER 133

FORMERLY

HOUSE BILL NO. 350

AN ACT TO AMEND CHAPTER 29, TITLE 7 OF THE DELAWARE CODE R

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF D

Section 1. Amend Title 7, Section 2961 of the Delaware
and a comma as "Ohio," to the list of states forming the
the state "New Jersey" and before the state "Pennsylvania"

Approved July 18, 1989.

CHAPTER 131

FORMERLY

HOUSE BILL NO. 348

AN ACT TO AMEND CHAPTER 35, TITLE 7 OF THE DELAWARE CODE RELATING TO COMMERCIAL FOREST PLANTATIONS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Section 3503, Chapter 35, Title 7 of the Delaware Code by adding in
said section immediately following the second sentence thereof and before the third
sentence thereof the following:

"Additionally, all applications for tax exemption must be accompanied by a forest
management plan approved by the State Forester."

Approved July 18, 1989.

CHAPTER 350
FORMERLY

**SENATE BILL NO. 397
AS AMENDED BY SENATE AMENDMENT NO. 1**

AN OMNIBUS ACT TO AMEND TITLE 11 AND TITLE 16, TO PROVIDE CLARIFICATION AND CONSISTENT APPLICATION OF THE INTENT OF THE TRUTH IN SENTENCING ACT OF 1989.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Title 11, Section 4204(c) by striking said section in its entirety and substituting the following:

"(m) Whenever a court imposes a sentence inconsistent with the presumptive sentences adopted by the Sentencing Accountability Commission, such court shall set forth on the record its reasons for imposing such penalty."

Section 2. Amend Title 11, Section 4206(c) by striking said section in its entirety and substituting the following:

"(c) the sentence for an unclassified misdemeanor shall be a definite sentence fixed by the court in accordance with the sentence specified in the law defining the offense. If no sentence is specified in such law, the sentence may include up to 30 days incarceration at Level V and such fine up to \$500, restitution or other conditions as the court deems appropriate."

Section 3. Amend Title 11, Section 4216(d) by striking the words "to that date" and substituting therefore the words "June 30, 1990".

Section 4. Amend Title 11, Section 4217 by striking subsections (a) and (b) in their entirety and substituting therefor the following:

"(a) In any case where the trial court has imposed an aggregate sentence of incarceration at Level V in excess of one year, the court shall retain jurisdiction to modify the sentence to reduce the level of custody or time to be served under the provisions of this section.

(b) The court may modify the sentence solely on the basis of an application filed by the Department of Correction for good cause shown which certifies that the release of the defendant shall not constitute a substantial risk to the community or himself."

Section 5. Amend Title 11, Section 4217(c) by striking the words "exception of" and substituting therefor the word "exception".

Section 6. Amend Title 11, Section 4217 by adding thereto a new subsection (f) to read as follows:

"(f) Nothing contained in this section shall be construed to limit the court's ability to modify a sentence within the scope of the trial court's duly promulgated rules."

Section 7. Amend Title 11, Section 4254(a) by deleting all words after "Class G felony".

Section 8. Amend Title 11, Section 4256(b) by deleting all words after "Class G felony".

Section 9. Amend Title 11, Section 4336(d) by deleting all words after Class G felony.

Section 10. Amend Title 11, Section 4336(r) by deleting all words after "Class A misdemeanor".

Section 11. Amend Title 11, Section 1361(b) by deleting subsection (b) in its entirety and substituting the following:

"(b) Obscenity is a Class E felony if a person sells, delivers or provides any obscene picture, writing, record or other representation or embodiment of the obscene to a person under the age of 18. In all other cases, obscenity is a Class G felony. In addition to the above penalties, upon conviction of obscenity involving live conduct as defined in Section 1364 of this title, the court shall order the business or establishment which presented, displayed or exhibited such conduct closed for a period of 6 months."

Section 12. Amend Title 11, Section 1351(c) by deleting the words "for Class G felony consistently".

Section 13. Amend Title 11, Section 1504(a) by deleting all words following "punished by imprisonment" and inserting thereafter the words "and pay a fine of not less than \$25,000."

Section 14. Amend Title 16, Section 4752 by deleting the words "10 years" and substituting therefor the words "5 years".

Section 15. Amend Title 16, Section 4753 by deleting everything after the words "Class A misdemeanor".

Section 16. Amend Title 16, Section 4754(a) by deleting everything after the words "Class B misdemeanor".

Section 17. Amend Title 16, Section 4754(b) by deleting everything after the words "Class C misdemeanor".

Section 18. Amend Title 16, Section 4755(b) by deleting said section in its entirety and substituting therefor the following:

"(b) Any person who violates paragraph (a)(1), (a)(2), (a)(4) or (a)(5) of this section shall be guilty of a Class F felony. Any person who violates paragraph (a)(3) of this section shall be guilty of a Class A misdemeanor."

Section 19. Amend Title 16, Section 4756(b) by deleting everything after the words "Class F felony".

Section 20. Amend Title 16, Section 4757(c) by deleting the words "more than 1 year" and substituting therefor the words "more than 30 days".

Section 21. Amend Title 16, Section 4757(e) by deleting everything following the words "Class G felony".

Section 22. Amend Title 16, Section 4761(1) by deleting everything after the words "Class C felony".

Section 23. Amend Title 16, Section 4761(2) by deleting everything after the words "Class E felony".

Section 24. Amend Title 16, Section 4771 by deleting everything after the words "Class A misdemeanor".

Section 25. Amend Title 16, Section 4772 by deleting everything after the words "Class G felony".

Section 26. Amend Title 16, Section 4773 by deleting everything after the words "Class E felony".

Section 27. Amend Title 16, Section 4774 by deleting everything after the words "unclassified misdemeanor".

Section 28. Amend Title 11, Section 4216(c) by striking said section in its entirety and substituting the following:

"(c) Where an inmate is serving Level V (incarceration) sentence(s) imposed "not under the Truth In Sentencing Act of 1989, and is subsequently sentenced to Level V under the provisions of the Truth In Sentencing Act and had less than an aggregate 3 years remaining on his prior sentence(s), the Court at the time of sentencing under the Truth In Sentencing Act may in its discretion suspend the remainder of the prior non-Truth In Sentencing Level V sentence(s), unless such sentence was a statutory mandatory term."

Section 29. Amend Title 11, Section 635 by adding, after the words "B Felony," the following: "Notwithstanding any provision of this title to the contrary, the minimum sentence for a person convicted of Murder Second Degree in violation of this section shall be ten (10) years at Level V."

Section 30. Amend Title 11, Section 774 by adding, after the words "B Felony," the following: "Notwithstanding any provision of this title to the contrary, the minimum

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sentence for a person convicted of Unlawful Sexual Intercourse in the Second Degree in violation of this section shall be ten (10) years at Level V."

Section 31. Amend Title 11, Section 6532(d) by striking the words "Class B felony" and substituting in their place the words "Class B felony or Class C felony".

Section 32. Amend Title 11, Section 6537(b) as follows:

a). By deleting the words "Notwithstanding any other provision of this section or title to the contrary" and inserting in their place the words "With the exception of the authority granted under Section 4205(h) and 4205(i) of this Title".

b). By adding after the words "B felony sex offense" the words "or C felony sex offense".

Section 33. Amend Title 11, Section 4204(l) by adding the following at the end of said section:

"The 6-month transition period required by this subsection may, at the discretion of the Court, be in addition to the maximum sentence of imprisonment established by the statute."

Section 34. Amend Title 11, Section 1326(a) by deleting all the words following "shall be guilty of" and inserting thereafter the words "a Class A misdemeanor."

Section 35. Amend Title 11, Section 1326(b) by deleting all words following "is guilty of" and inserting thereafter the words "a Class B misdemeanor."

Section 36. Amend Title 11, Section 1253 by deleting the second paragraph in its entirety, replacing with the following:

"Escape after conviction shall be a Class D felony; provided however, that if the defendant uses force or the threat of force against another person or has a deadly weapon in his possession at the time of escape, it shall be a Class C felony. If the defendant inflicts injury upon another person during the escape or from the time of escape until such person is again in custody, it shall be a Class B felony. Any sentence imposed upon conviction of escape after conviction shall not run concurrently with any other sentence."

Section 37. Amend Title 11, Section 4214 as follows:

a) Amend subsection (a) by deleting the words "may, in its discretion, impose a life sentence upon the person so convicted." and substituting in lieu thereof the following:

"may in its discretion, impose a sentence of up to life imprisonment upon the person so convicted. Notwithstanding any provision of this Title to the contrary, any sentence so imposed pursuant to this subsection shall not be subject to suspension by the Court, and shall be served in its entirety at a full custodial level V institutional setting without benefit of probation or parole, except that any such sentence shall be subject to the provisions of Sections 4205(h), 4217, 4381, and 4382 of this Title."

b) Amend Subsection (b) by adding the following language at the end thereof:

"Notwithstanding any provision of this Title to the contrary, any sentence imposed pursuant to this subsection shall not be subject to suspension by the Court, and shall be served in its entirety at a full custodial Level V institutional setting without benefit of probation, parole, earned good time or any other reduction."

Section 38. Except for Section 3 of this Act, which Section shall be effective immediately, the provisions of this Act shall be effective at the same time and in the same manner as the provisions of 67 Delaware Laws, Chapter 130.

Approved July 13, 1990.

CHAPTER 351

FORMERLY

SENATE BILL NO. 412

AS AMENDED BY SENATE AMENDMENT NO. 1 AND HOUSE

AN ACT TO AMEND CHAPTER 27, TITLE 10 OF THE DELAWARE CODE
COMMISSIONING OF CONSTABLES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DEI

Section 1. Amend §2701, Title 10, Delaware Code by
entirety and substituting in lieu thereof the following:

"§2701. Appointment.

(a) The Board of Examiners of Constables shall appoint constables as it deems necessary, from among those persons who preserve the peace and good order of the state.

(b) Upon expiration of a constable's term of office, the Board of Examiners that his commission as a constable be renewed within the discretion of the Board of Examiners, and such review."

Section 2. Amend §2702(e), Title 10 of the Delaware Code by
entirety and substituting in lieu thereof the following:

(e) After the review process is completed, the Board of Examiners shall commission those applicants who have, as determined by the Board, satisfied the requirements of this chapter and who are qualified to be constables."

Section 3. Amend §2703(e), Title 10, Delaware Code
Governor" as they appear in the first sentence of said subsection.

Section 4. Amend §2703, Title 10, Delaware Code by ac
follows:

"(f) No constable shall be appointed for the corporation, civic association or governmental entity or by the Board of Examiners that the proposed appointment will be for law enforcement or police agencies and is necessary to circumstances where public law enforcement or police ag

Section 5. Amend §2704(a), Title 10, Delaware Code by
entirety and substituting in lieu thereof the following:

"(a) The term of office for constables shall be appointed prior to the effective date of this law and shall be by the Board of Examiners within one (1) year of the date of this law. The constable, including one appointed before the effective date of this law, shall be discharged by the Board for cause after review. A constable, including one appointed before the effective date of this law, shall be discharged by the Board for cause prior to the expiration of the term. The Board of Examiners shall establish procedures for notification of the discharge of a constable. For the purposes of this section, "cause" shall mean: (1) Conviction of a crime involving moral turpitude; (2) A finding by the Board that an individual is incompetent to perform the duties of a constable; (3) A finding by the Board that an individual is physically unable to perform the duties of a constable; or (4) Gross negligence in the performance of a constable's duties."

Section 6. Amend §2705, Title 10, Delaware Code by ad
shall read as follows:

"(4) As part of his duty, and in the exercise of his authority, he shall make a custodial detention, arrest, or search, or when the occurrence of a criminal act is reported to him, he shall take the necessary steps to investigate and to comply with the reporting and identification requirements of the full service police agency.